IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Bail Appl..No. 4289 of 2007()

CMP.1383/2007 of J.M.F.C.,PARAPPANANGADI
CRIME NO.318/07 OF TANUR POLICE STATION

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PETITIONER/ACCUSED

HAMSAKOYA, S/O POCKER,
CHEKKINTEPURAKKAL HOUSE,
TANUR AMSOM, THADIPPADI.
(TANUR POLICE STATION LIMITS)

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4289 of 2007

Dated this the 17th day of July, 2007

ORDER

Application for regular bail. The petitioner faces allegations, inter alia, under Sec.376 of the IPC. He is alleged to have indecently assaulted and committed rape on the prosecutrix – a woman aged about 34 years. The petitioner is a person aged about 40 years. The victim was pregnant by about 9 months. The petitioner allegedly owed amounts to the husband of the prosecutrix. To demand the return of the said amount or part of it, the prosecutrix had allegedly gone to the house of the petitioner. There, the wife of the petitioner as also a stranger were allegedly present. The demand for money was resisted and there was an exchange of words. Infuriated, the petitioner is alleged to have dragged the prosecutrix into his bed room and there, after closing the door, he is alleged to have committed rape on her. A complaint was made on the second day after the occurrence. The wife of the

petitioner was allegedly present in the house and she had also allegedly witnessed the occurrence. The petitioner was arrested on 25/6/07. He continues in custody from that date.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The monetary dispute between the petitioner and the husband of the de facto complainant is prompting her to raise false and vexatious allegation against the petitioner. Even accepting the entire allegations, the theory of rape does not stand to reason and logic, submits the learned counsel for the petitioner. There, evidently, was a dispute relating to payment of money and tall, exaggerated and false allegations are now being raised against the petitioner, it is submitted.

3. The learned Public Prosecutor opposes the application. Investigation is not complete yet. Even the wife of the petitioner supports the de facto complainant's version that consequent to the dispute relating to money, she was dragged physically to the bed room of the petitioner. The petitioner was drunk also. In these circumstances, there is nothing inherently improbable in the allegations raised. At any rate, it is too early to consider the question of release of the petitioner on bail,

submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. Considering the peculiar facts and circumstances of this case, the Case Diary was perused by me in extenso. I have gone through the statements of the wife of the petitioner as also the stranger witness who allegedly was present at the scene of the crime. As regards what had actually happened inside the bed room, we have only the version of the prosecutrix and the present allegations are not supported totally and completely by her conduct immediately after she went out of the bed room. I shall scrupulously avoid a more detailed discussion on the acceptability of the allegations and the credibility of the data collected. Suffice it to say that I am satisfied that the petitioner can be granted bail subject to appropriate conditions. A short further time can be granted to the Investigator to complete the investigation.

5. **In the result:**

(a) This application is allowed. The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall not be released from custody on the strength of this order prior to 25/7/07. The Investigator shall, in

the meantime, make every endeavour to complete the investigation.

(ii) The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioner shall not, except for the purpose of complying with condition No.(iv) below, enter the jurisdiction of the Tanur Police Station for a period of two months from the date of his release from custody.

(iv) The petitioner shall make himself available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of three months from the date of his release.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge